LIBRARY
SUPREME COURT, U. S.

FILED
NOV 4 1961
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 533

JAMES W. DUTTON, ET AL.,
Appellants,

v.

J. MILLARD TAWES, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

HYMAN A. PRESSMAN,
337 St. Paul Place,
Baltimore 2, Maryland,
Counsel for Appellants.

The Daily Record Co., Baltimore 3, Md.

INDEX

Subject Index

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statement	4
Federal Questions are Substantial	8
Conclusion	14
Appendix A — Opinion of the Court of Appeals of Maryland	15
Appendix B — Mandate of Court of Appeals of Maryland	35
Decree of Circuit Court of Baltimore City	35
Appendix C — Pertinent Text of Chapter 269 of Laws of Maryland of 1959	36

Table of Authorities Cited

Cases

Baker v. Carr, Supreme Court of U.S., No. 6 October Term 1961	9
Burton v. United States, 196 U.S. 283	12
Cooper v. Aaron, 358 U.S. 1	13
Gomillion v. Lightfoot, 364 U.S. 339	10
Huntingdon v. Attrill, 146 U.S. 657	11
Lathrop v. Donohue, 81 S. Ct. 1826	3
Marcus v. Search Warrants, 81 S. Ct. 1708	3
McGowan v. State of Maryland, 81 S. Ct. 1101	3

PAGE

Metalakatla Indian Community v. Egan, 363 U.S. 555 2
State of Maryland v. State of West Virginia, 217 U.S. 577 11
State of Maryland v. State of West Virginia, 225 U.S. 1 11
Stone v. Mississippi, 101 U.S. 116 12
The Antelope, 146 U.S. 657 11
Torcaso v. Watkins, 81 S. Ct. 1680 3
United States v. Grimaud, 220 U.S. 506 13

Constitution of Maryland

Article III, Section 29, Titles to Acts 12
Article XVI, Section 5(a), Referendum 9

Statutes of Maryland

Article 16, Section 89, Injunctions 2
Article 31A, Uniform Declaratory Judgments Act 2
Article 33, Section 170, Referendum 8
Chapter 269 of Acts of 1959 36

Statutes of United States

28 U.S.C. Section 1257(2), Appeal 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. ------

JAMES W. DUTTON, ET AL.,
Appellants,

v.

J. MILLARD TAWES, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

To The Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Appellants respectfully submit the following jurisdictional statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (Appendix A, infra, page 15) is reported at 225 Md. 484 and

171 A. 2d 688. The opinion of the Circuit Court of Baltimore City was not reported, but is set forth on pages 20 to 61 of the Record Extract before the Court of Appeals of Maryland, nine copies of which have been filed herein.

JURISDICTION

This is an appeal from the final judgment of the Court of Appeals of Maryland affirming the Decree of the Circuit Court of Baltimore City which had declared that Chapter 269 of the Laws of Maryland of 1959 (ratifying a compact between the State of Maryland and the State of Virginia pertaining to the Potomac River) is constitutional. The final judgment and the Decree are set forth in Appendix B, infra, page 35). The original bill of complaint sought a declaratory decree pursuant to the provisions of the Uniform Declaratory Judgments Act, Article 31A of the Annotated Code of Maryland (1957 Edition). An injunction was also prayed in pursuance of the Maryland statute on injunctions, Article 16, Section 89 et seq. of the Annotated Code of Maryland (1957 Edition).

The final judgment of the Court of Appeals of Maryland was dated June 12, 1961 and was entered in the Circuit Court of Baltimore City on July 13, 1961. The notice of appeal was filed on September 8, 1961 in the Circuit Court of Baltimore City.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. Section 1257 (2). Such right of appeal from a final judgment or decree rendered by the highest court of a state where the validity of a statute of the state is unsuccessfully questioned on the ground of its being repugnant to the Constitution of the United States was sustained by this Court in *Metlakatla Indian Community v. Egan* (1960), 363 U.S.

555, 80 S. Ct. 1321, 4 L. Ed. 2d 1397; *McGowan v. State of Maryland*, decided May 29, 1961, 81 S. Ct. 1101, 6 L. Ed. 2d 393; *Lathrop v. Donohue*, decided June 19, 1961, 81 S. Ct. 1826, 6 L. Ed. 2d 1191; *Marcus v. Search Warrants*, decided June 19, 1961, 81 S. Ct. 1708, 6 L. Ed. 2d 1127; and *Torcaso v. Watkins*, decided June 19, 1961, 81 S. Ct. 1680.

The statutory provisions that are involved are lengthy and are cited as Chapter 269 of the Laws of Maryland of 1959. Nine copies of said statute have been filed herein. The pertinent text is set forth in Appendix C, infra, page 36.

QUESTIONS PRESENTED

1. Were Maryland's Watermen and other Citizens deprived of due process under the Fourteenth Amendment of the United States Constitution by the failure of Governor Tawes to publish the text of Chapter 269 of the Laws of Maryland of 1959 as required by the Constitution and Laws of Maryland?

2. Does Chapter 269 of the Laws of Maryland of 1959 violate the Federal Constitution because it authorizes a Joint Commission of Virginians and Marylanders to regulate and police the conduct of Marylanders on the Maryland-owned Potomac River?

3. Is said Chapter 269 in violation of the due process clause of the United States Constitution because it empowers Virginia Courts to try Marylanders for the commission of crimes on the Maryland-owned Potomac River?

4. Is said Chapter 269 Unconstitutional because the transfer of jurisdiction to Virginia Courts and other important provisions are not mentioned in the title of the Act?

5. Is said Chapter 269 unconstitutional because it abdicates the Maryland Legislature's power to legislate on the Maryland-owned Potomac River by removing the Legislature's power to pass laws relating to finfish, crabs, oysters and clams in the Potomac River after December 1, 1958?

6. Is said Chapter 269 unconstitutional because it delegates to the Joint Commission the Legislative power to reduce the maximum punishment for criminal offenses on the Maryland-owned Potomac River?

7. Is Chapter 269 unconstitutional because it usurps the power of Future Legislatures by illegally binding them to make annual appropriations of not less than $50,000.00 for the Joint Commission?

STATEMENT

Appellants are residents, citizens and taxpayers of Charles County and St. Mary's County, Maryland, who reside and work as watermen adjacent to and upon the Potomac River, making their living in the business of fishing, crabbing and oystering. The 1959 session of the Maryland Assembly enacted Chapter 269 to approve, confirm and ratify a compact between the State of Maryland and the Commonwealth of Virginia pertaining to the Potomac River. This law was forced to a state-wide referendum by petitions signed by almost 13,000 qualified voters in accordance with the provisions of Article XVI of the Constitution of Maryland. The Act was placed on the ballot in the election held on November 8, 1960. Although the Maryland constitutional and statutory provisions required that the text of the law be published at least in all the daily newspapers published in Baltimore City and in

two or more newspapers in each county, the text was published in only one Baltimore City newspaper, The Baltimore Sun. The text of the law was not published in The Baltimore News-Post, The Evening Sun or the Daily Record, which are three other daily newspapers in Baltimore City, nor was it published in any of the numerous newspapers within the 23 counties of Maryland, although 15 constitutional amendments on the ballot were published in 3 Baltimore City newspapers and 53 county newspapers. The Secretary of State explained that the failure to publish the text of Chapter 269 in any other Baltimore City newspapers or in any county newspapers was due to an "unintentional mistake" and a "misinterpretation of the statute" on the part of his office and that funds would have been readily available for the necessary publication if the mistake had not occurred. Although there was considerable publicity from which the public was enabled to learn that this referendum would be on the ballot, very little, if any, of the publicity referred to the terms of the Potomac River Compact, which terms were set forth in Chapter 269. Thus, very few Marylanders were familiar with the terms of the compact, including the provisions which would transfer part of the sovereignty over the Maryland-owned Potomac River to Virginia and which would empower Virginia officers to arrest Marylanders on the river and empower Virginia courts to try Marylanders for alleged offenses committed on the Maryland-owned river and to confiscate their vessels, boats and equipment.

Nor did the voters know that the Compact abdicated the Maryland Legislature's power to amend Maryland's laws relating to finfish, crabs, oysters and clams in the Maryland-owned Potomac River. In addition to the voters not

having the text of the Compact published in their newspapers, the electorate was also given misleading information regarding its terms by the Governor of Maryland, who issued a public statement which declared that "we give away nothing under the proposed agreement", and by the Chairman of the Maryland Tidewater Fisheries Commission, who mailed out 6,000 official letters, which were publicized in the newspapers, misrepresenting that "the only matter covered in the Compact is fishing rights" and that "Maryland in the Compact gives up nothing".

Appellants filed a bill for an injunction to enjoin the Governor of Maryland from issuing a proclamation declaring Chapter 269 of the Acts of 1959 to have been adopted by the people of Maryland as a part of the laws of the State of Maryland in the referendum vote held on November 8, 1960. The bill also requested a declaratory decree to establish that the text of Chapter 269 was not published in accordance with the requirements of Section 5 of Article XVI of the Constitution of Maryland before the election, thereby depriving the voters of an opportunity to read the text of the law in their newspapers as was intended by the constitutional provision and that the vote on the ratification of the law at said election was null and void. The bill also requested a declaratory decree to declare that said Chapter 269 was unconstitutional for the following additional reasons:

1. Because it authorizes a Joint Commission of Virginians and Marylanders to regulate and police the conduct of Marylanders on the Maryland-owned Potomac River.

2. Because it empowers Virginia Courts to try Marylanders for the commission of crimes on the Maryland-owned Potomac River.

3. Because the transfer of judrisdiction to Virginia Courts and other important provisions are not mentioned in the title of the Act.

4. Because it abdicates the Maryland Legislature's power to legislate on the Maryand-owned Potomac River by removing the Legislature's power to pass laws relating to finfish, crabs, oysters and clams in the Potomac River after December 1, 1958.

5. Because it delegates to the Joint Commission the Legislative power to reduce the maximum punishment for criminal offenses on the Maryland-owned Potomac River.

6. Because it usurps the power of future legislatures by illegally binding them to make annual appropriations of not less than $50,000.00 for the Joint Commission.

The Appellee filed a demurrer and answer and both sides filed motions for summary judgment. The Circuit Court of Baltimore City decreed that Chapter 269 was duly ratified by the voters and that the law was constitutional and dismissed the bill. Appellants appealed to the Court of Appeals of Maryland, which affirmed the decree of the lower court.

The parts of the bill of Complaint which alleged the constitutional violations aforementioned are set forth on pages 4, 5, 6 and 7 of the Record Extract filed herein. The prayers in the bill of complaint which requested that the law be declared unconstitutional are on pages 7 and 8 of the Record Extract. The Decree of the Circuit Court of Baltimore City declaring and decreeing "That Chapter 269 of the Acts of 1959 is constitutional" is included in Appendix B, infra, page 35.

FEDERAL QUESTIONS ARE SUBSTANTIAL

I. The Insufficient Advertising of the Referendum Deprived Plaintiffs of Due Process and the Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

This case involves a deprivation of the rights of the voters to be informed of the subject matter of the referendum upon which they had the right to vote, as well as the right of those specially interested in the referendum to have it voted upon intelligently by giving the voters notice of the text in accordance with the requirements of the Maryland Constitution. The voters and the parties whose livelihoods depend on the law were not only deprived of due process but they were also deprived of the equal protection of the laws. The text of 15 other questions to be voted upon in the same election were published in 3 Baltimore City newspapers and 53 county newspapers but this referendum was published in only one Baltimore City newspaper and in no county newspapers. This, despite the Maryland requirement that the text of the law be published at least in all the daily newspapers published in Baltimore City and in two or more newspapers in each of Maryland's 23 counties.

Section 170 of Article 33 of the Annotated Code of Maryland (1957 Edition) provides:

> "Not later than thirty days prior to any election at which laws are to be submitted to the voters under the provisions of Article XVI of the State Constitution, the text of any such measures shall be published by order of the Governor at least by one insertion in two or more newspapers within the several counties of the State and in all the daily newspapers published in Baltimore City which will publish the same at the current rate of commercial advertising; in the case of

> laws referred only to the voters of Baltimore City or of a particular county, such publication shall be made in at least one newspaper of general circulation in said city or county."

This statutory provision was enacted by the General Assembly in compliance with the mandate of Section 5(a) of Article XVI of the Constitution of Maryland, which reads as follows:

> "The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed Constitutional Amendments."

This Court on October 9, 1961 heard the case of *Baker v. Carr*, No. 103 October Term 1960, No. 6 October Term 1961, on appeal from the decision reported in 179 F. Supp. 824 (M.D. Tenn. 1959) which is concerned with geographical discrimination against some of the voters because of unfair apportionment of election districts. The complaint was therein made that the right to vote was diluted by the geographical discrimination. In this case, the right to vote was diluted by the withholding of information from the voters in violation of the state constitutional requirement that the information be furnished. Voting in the dark is as much a dilution of the right to vote as that which is caused by unfair apportionment. Also, voters in the counties where the text of the referendum was not published in this case were denied equal protection of the laws just as voters in some counties were denied equal protection because of discriminatory apportionment in *Baker v. Carr*. In other words, this case involves geographical discrimination which dilutes the value of the

vote just as was involved in the case of *Baker v. Carr*. In this case, there is the added factor that 15 other questions voted upon in the same election were published in 56 newspapers, in accordance with the state constitutional requirement, whereas the question involved here was only published in one newspaper, in violation of the state constitution. People whose livelihoods may have depended on the 15 constitutional referenda were given their full right of having the voters properly informed, while the Appellants, whose livelihoods depend on the referendum involved here, were denied this right.

Similarly, this Court granted certiorari on March 22, 1960 in the case of *Gomillion v. Lightfoot*, 362 U.S. 916, which involved a state's legislative attempt to alter a city's boundaries for the purpose of diluting the voting rights of a group of Negroes. This Court considered this question sufficiently substantial to require that it be heard on its merits, and then on November 14, 1960 reversed the decision below by ruling that the allegations made out a cause of action, 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110. Appellants submit that the dilution of the right to vote by removing the opportunity to vote intelligently is as substantial a deprivation of voting rights as that which may be caused by gerrymandering. Withholding of state constitutional rights which weaken the vote is offensive, whether it withholds knowledge of the matter being voted upon, whether it gives the voters unequal representation or whether it deprives the voters of full participation.

II. Various Provisions of the Statute Ratifying the Potomac River Compact Are Repugnant to the United States Constitution.

Several provisions of Chapter 269 of the Laws of Maryland of 1959 are unconstitutional because they violate the

due process clause and the equal protection clause of the Fourteenth Amendment.

Maryland's claim to the Potomac River as part of her territory was confirmed by this Court in *State of Maryland v. State of West Virginia*, 217 U.S. 577 and in *State of Maryland v. State of West Virginia*, 225 U.S. 1. Article 4 of the Declaration of Rights of Maryland declares, "That the People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State." The attempt to transfer this right to a joint commission of Virginians and Marylanders would violate Appellants' right of due process.

In addition, Section 3 of Article V of the Compact transfers to Virginia Courts the jurisdiction to try persons for any offenses committed on the Potomac River. A Marylander may be tried in a Virginia Court for the alleged Commission of a crime on the Maryland-owned Potomac River. The section reads as follows:

> "Section 3. Jurisdiction of Court. The officer making an arrest or preferring a charge for violation of a regulation of the Commission or an applicable state law respecting the waters within the Commission's jurisdiction shall take the alleged offender to a court of competent jurisdiction in either State, in a county adjacent to the portion of the Potomac River where the alleged offense occurred, which shall thereupon have jurisdiction over the offense."

In *Huntingdon v. Attrill*, 146 U.S. 657, this Court agreed with the doctrine that one sovereign State's laws are not enforceable by another State, quoting the opinion of Chief Justice Marshall in *The Antelope*, 10 Wheat. 66, 146 U.S. 657, "The Courts of no country execute the penal laws of another."

This Court also reversed a conviction in *Burton v. United States*, 196 U.S. 283, because the offense charged was not committed in the State of Missouri, where the accused was tried.

Appellants were further deprived of their right of due process because the transfer of jurisdiction to Virginia Courts and other important provisions were not mentioned in the title of the Act, as required by Section 29 of Article 3 of the Maryland Constitution. Thus, the title failed to put the members of the General Assembly and the members of the public on notice, thereby further adding to the voting in the dark.

Another constitutional violation was the freezing of Maryland's laws relating to finfish, crabs, oysters and clams in the Potomac River after December 1, 1958. This Court stated in *Stone v. Mississippi*, 101 U.S. 116:

> "Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the State; but no Legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police. * * * The power of governing is a trust committed by the people to the government, no part of which can be granted away. The people, in their sovereign capacity, have established their agencies for the preservation of the public health and the public morals, and the protection of public and private rights. These several agencies can govern according to their discretion, if within the scope of their general authority, while in power; but they can not give away or sell the discretion of those that are to come after them, in respect to matters the government of which, from the very nature of things, must vary with varying circumstances.

Chapter 269 is also unconstitutional because it delegates to the joint commission the legislative power to reduce

the maximum punishment for criminal offenses on the Maryland-owned Potomac River. In *United States v. Grimaud*, 220 U.S. 506, 521, this Court declared:

> "That Congress cannot delegate legislative power is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."

Similarly, Chapter 269 unconstitutionally usurps the power of future legislatures by illegally binding them to make annual appropriations of not less than $50,000.00 for the joint commission.

Thus, in addition to the subversion of constitutional rights caused by the woefully inadequate publication of the text of the statute, the law itself is violative of many constitutional safeguards. Such disregard for constitutional rights by both the governor and the legislature of the State require correction by this Court, which recently said in *Cooper v. Aaron*, 358 U.S. 1, 16-17:

> "The controlling legal principles are plain. The command of the Fourteenth Amendment is that no 'State' shall deny to any person within its jurisdiction the equal protection of the laws. 'A state acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government * * * denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.' Ex parte Virigina, 100 U.S. 339, 347, 25 L. Ed. 676. Thus the prohibitions of the Fourteenth Amendment ex-

tend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see Virginia v. Rives, 100 U.S. 313, 25 L. Ed. 667; Com. of Pennsylvania v. Board of Directors of City Trusts of Philadelphia, 353 U.S. 230, 77 S. Ct. 806, 1 L. Ed. 2d 792; Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161."

CONCLUSION

It is submitted that the Court has jurisdiction and the substantial, important federal questions involved justify the hearing of this appeal from a decree which erroneously declares constitutional a law that is clearly unconstitutional and which withholds from the Appellants protections which are guaranteed to them by the Fourteenth Amendment of the Constitution of the United States; namely, due process of law and equal protection of the laws.

Respectfully submitted,

HYMAN A. PRESSMAN,

Counsel for Appellants.

APPENDIX A

Opinion of Court of Appeals of Maryland

James W. Dutton et al.

v.

J. Millard Tawes, in his Official Capacity as Governor of the State of Maryland.

No. 1, Sept. Term 1961.

Court of Appeals of Maryland.

June 12, 1961.

Before BRUNE, C.J., and HENDERSON, HAMMOND, PRESCOTT and MARBURY, JJ.

Reargued before BRUNE, C. J., HENDERSON, HAMMOND, PRESCOTT, HORNEY, and MARBURY, JJ., and JAMES MACGILL, J., specially assigned.

HAMMOND, Judge.

Appellants are Southern Maryland citizens and taxpayers who earn their livelihood there by fishing, crabbing and oystering in the Potomac River. On their own behalf and on behalf of all others similarly situated who might desire to make themselves parties, they filed a bill in the Circuit Court of Baltimore City to enjoin the Governor from proclaiming Chapter 269 of the Acts of 1959, a compact with the State of Virginia relating to the Potomac River, to have been adopted by the people of Maryland as a law of the State in a referendum vote which had been taken at the election of November 8, 1960. The bill also prayed declarations (1) that the text of Ch. 269 had not been published prior to the election as required by Sec. 5 of Art. XVI of the Maryland Constitution and Code (1957),

Art. 33, Sec. 170, and therefore the vote on the proposed law was void, and (2) that the Act is unconstitution because (a) it authorizies a joint commission of Marylanders and Virginians to regulate and police the conduct of Marylanders on the Maryland owned Potomac River; (b) it empowers Virginia courts to try Maryland citizens for the commission of crimes on the Potomac River; (c) it delegates to the Joint Commission the legislative power to reduce punishment for criminal offenses on the Potomac River; (d) it usurps the power of future legislatures by binding them to make annual appropriations of not less than $50,000 for the Joint Commission; (e) it abdicates the Legislature's power to pass laws relating to fish, crabs, oysters and clams in the Potomac River after December 1, 1958; and (f) the title is deficient.

Judge Sodaro held the Act to have been duly approved by the voters and to be constitutional.

The origin and history of the compact of 1785 between Maryland and Virginia as to the Potomac River — which provided, inter alia, that "the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both states * * *" — and the definitive fixing of the low water mark on the south shore of the river as the boundary between Maryland and Virginia by the so-called Black-Jenkins Award of 1878 (with the approval of Congress, in 1879), all are set out in the opinion in Barnes v. State, 186 Md. 287, 295, 47 A. 2d 50. The two states long have had difficulties over the matters of fishing and oystering in the River.

These disagreements resulted in the unilateral abrogation of the compact of 1785 by the General Assembly of Maryland by the passage of Ch. 766 of the Acts of 1957. Virginia soon thereafter filed a complaint in the Supreme Court of the United States seeking to have the compact declared forever binding on Maryland and Virginia. The Court referred the case to Mr. Justice Stanley Reed, retired, as Special Master and a stay was ordered to permit the reaching of an agreement. The Governors of the two

states appointed commissioners to resolve the differences, and the proposed compact of 1958 resulted from their efforts. The General Assembly of Virginia approved it, as did the General Assembly of Maryland by the passage of Ch. 269 of the Acts of 1959.

The Act was forced to referendum in Maryland by the signatures of almost 13,000 voters under the provisions of Art. XVI of the Maryland Constitution. At the election of November 8, 1960, some 449,347 voters recorded their preferences as to the Act, 244,510 citizens voting for its adoption and 204,837 against.

The manner in which the text of Ch. 269 of the Acts of 1959 was published is the primary target of the appellants.

The Maryland Constitution, by Art. XVI, Sec. 5(a), provides that "The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed Constitutional Amendments." Article XIV requires publication before the election "in at least two newspapers, in each County, where so many may be published" and in three newspapers in Baltimore City "once a week for four weeks." By Chapter 335 of the Acts of 1941 (codified as Sec. 208 of Art. 33 of the Code of 1951) the Legislature specified that the text of a referred law should be furnished the voters by publication "once in some daily newspaper of general circulation throughout the State." This continued to be the law until the passage of Ch. 739, Sec. 170, of the Acts of 1957 (codified as Art. 33, Sec. 170), which requires publication by "at least by one insertion in two or more newspapers within the several counties of the State and in all the daily newspapers published in Baltimore City which will publish the same at the current rate of commercial advertising."

Because the employees of the Secretary of State's office continued to publish according to the 1941 law, instead of complying with the revisions of the Acts of 1957, the text of Ch. 269, the proposed compact, was published but once, in one newspaper, the Baltimore Sun, a paper which has a general circulation throughout the State, although of late years in many counties its readers are few in comparison to the total population. The texts of proposed constitutional amendments which were to be voted on at the same election of 1960 were published in fifty-three County papers and in three Baltimore City papers. It is not contended that the mistake in the publication of the text of the compact was other than unintentional.

The appellants argue that the constitutional and statutory provisions are mandatory and, therefore, the failure to follow them strictly invalidates the favorable vote on the compact. The appellee replies that after an election has been held, the courts treat such requirments as directory, that they were substantially complied with, and the failure to follow them strictly was not shown to have affected the results of the vote.

In reaching a decision, we treat the implementation by Code (1957), Art. 33, Sec. 170, of the constitutional mandate that the electorate be "furnished" the text of referred laws as establishing a statutory, rather than a constitutional, method of procedure. There are many ways in which the constitutional imperative that the content of referred laws be made available to the voters could be gratified. One is the way the Legislature deemed adequate from 1941 to 1957. If the election now challenged had been held in the first five months of 1957 no serious objection could have been made that the text of the compact had not been properly and adequately "furnished" the electorate. The 1957 Act substituted one statutory method for another. We test the adequacy of compliance with the 1957 Act by the standards the Courts have applied to statutes specifying the manner and extent of notice of elections or of the publication of issues to be voted on in elections.

The Maryland cases, like those elsewhere, have held that there is a clearly recognized difference between the effect given to modal provisions of the election laws before election and the effect of the same provisions after election. Election officials of course should do what the law tells them to do and, before election, a court will require that they do their duty. Yet if the election has been held before court action is sought and it is not shown that the failure of the officials to follow the law has interfered with the full and fair expression of the will of the voters, that expressed choice will not be disturbed by the Courts. Wilkinson v. McGill, 192 Md. 387, 393, 64 A. 2d 266; Graham v. Wellington, 121 Md. 656, 661, 89 A. 232; Seyboldt v. Town of Mt. Ranier, 130 Md. 69, 73, 99 A. 960; Carr v. Town of Hyattsville, 115 Md. 545, 549-550, 81 A. 8. The latest statement of the rule in this Court was in Lexington Park Volunteer Fire Department v. Robidoux, 218 Md. 195, 200, 146 A. 2d 184, 186: "It is generally held that an election which has been honestly and fairly conducted will not be vitiated by mere failure to follow the statute precisely unless the result is shown to have been affected or the statute expressly states that such failure renders the election void. After the election is held, statutes giving direction as to the mode and manner of conducting it are generally construed as directory, unless the deviation from the prescribed forms of the law had so vital an influence as probably to have prevented a free and full expression of the popular will. The courts reason that it would be unjustifiable to defeat the expressed will of the electorate if the irregularity did not frustrate or tend to prevent a free expression of the electors' intention or otherwise mislead them."

Appellants rely primarily on Baltimore and Drum Point Railroad Company v. Pumphrey, 74 Md. 86, 21 A. 559; County Commissioners of Montgomery County v. Henderson, 122 Md. 533, 89 A. 858; and Graf v. Hiser, 144 Md. 418, 125 A. 151, as holding the modal requirements of the election laws mandatory. The cases are distinguishable. In the County Commissioners case aid of the Court was sought

before election and in Graf v. Hiser the result of the election was deemed to have been affected by the irregularity.

Although two elections were involved in the Drum Point case, the decision turned on the interpretation of Art. III, Sec. 54, of the Maryland Constitution, which provides that no county shall give or loan its credit to an association or corporation unless authorized to do so by an act of the Legislature "which shall be published for two months before the next election for members of the House of Delegates * * * and shall also be approved by a majority of all the members elected to each House of the General Assembly at its next session after said election." The Court held that an act authorizing Anne Arundel County to lend its credit to a railroad company, passed in 1872 (which provided for a referendum at an election that should have been held on the fourth Monday in April 1873, but was held on the fourth Monday in April 1872), and a confirmatory act of 1874, were not valid because there had not been a publication of the act of 1872 for two months before the election of the members of the House of Delegates in November 1873 as prescribed by the constitution. The Court held that the two months' publication was one of the essential conditions precedent to a valid confirmatory act, and since all constitutional requirements had not been complied with, the authority attempted to be conferred upon the county had never been validly conferred.

The election cases hold generally that if a statute specifies that failure to follow its procedure shall invalidate the election, the required procedures must be followed or there is no valid election and the holding of the Court in the Drum Point case in effect was that it was implicit in the constitutional requirement that the failure to follow its prerequisites would invalidate subsequent action.

Appraising the case before us by the standards of the decided cases, it is clear there was no substantial compliance with the statutory requirements as to publication. Reproduction of the text of an Act in one paper, when the statute directs reproduction in fifty-six papers, cannot be

stretched to amount to substantial compliance. We think, however, that the record shows there was substantial, if not full, achievement of the purposes of the statute to acquaint the electorate fully with the law involved, and nothing to show that the deviation from the prescribed mode of acquainting, misled the voters or prevented, frustrated or interfered with a free, full and intelligent expression of the popular will. In the months before the voting, the Baltimore Sun published seventeen articles and four editorials on the compact and the Baltimore News-Post six articles and four editorials. The Washington Post and Washington Evening Star, which are widely read in Southern Maryland, and in Montgomery and Frederick Counties, published respectively six articles and one editorial and twelve articles and three editorials. There were various articles and editorials published in papers in sixteen of the Counties.

There were published in all some one hundred twenty-two articles, in many of which the views pro and con of public officials and prominent citizens as to various aspects of the compact were reported at some length. There were published throughout the State many letters to the editors, some one way, some the other. There were numerous radio and television news broadcasts relating to the proposed compact, including a purchased television program at which those who share appellants' views as to the undesirability of the compact attempted to persuade the electorate to see things their way. William J. McWilliams, Esquire, of the Maryland Bar, delivered a speech discussing exhaustively all of the aspects and particulars of the proposed compact on June 18, 1959, before lawyers from all over the State assembled at Atlantic City for the meeting of the Maryland State Bar Association. The speech was printed in full in the Daily Record of June 19, 1959. The Official Specimen ballot which contained a brief summary of the contents of Ch. 269 (as did, it would appear from the record, the sample ballots distributed by both of the major political parties) was published in fifty-three County papers and in three in Baltimore City.

The total vote on the compact of 449,347 was larger than that cast for and against all but two of the fifteen constitutional amendments voted on at the same time. It was 42½% of the 1,055,346 votes case for President in Maryland in 1960. In 1956 some 932,000 Maryland votes were recorded in the presidential election. The highest total vote that year on a referred question was 42½% of the presidential total, or 394,773 votes on a constitutional amendment as to absentee voting by the physically disabled. Maryland Manual 1959-1960, pp. 383, 392. In 1952 the percentage of the highest vote on a referred law was 42⅛% of the presidential total. Maryland Manual 1953-1954, pp. 305, 309.

The appellee has produced figures showing the number of votes cast for President, and on each of the fifteen amendments (which were fully advertised), and on the compact, in each of the Counties of the State and in Baltimore City. The average vote on questions in relation to the vote on presidential cadidates varied from a high of 57.58% in Baltimore County to a low of 12.54% in Somerset County. In twenty-one of the twenty-three Counties and in Baltimore City the vote on the compact was greater than the average vote on all the questions. In Baltimore City and in Baltimore County, where the Sun, in which the text of the compact was printed, has its largest circulation, the average percentages and the compact percentages were, respectively, 33.93% and 34.60%, and 57.58% and 56.79%. In Allegany County the average percentage was 17.71% and the compact percentage was 25.34%. In Somerset County the average was 12.54% and the compact average was 30.90%. In Washington County the percentages were 23.63% and 31.78%, and in Calvert County 26.16% against 36.41%. Mongomery County showed 57.72% to 61.42%.

We cannot assume that the almost 450,000 people who voted on the compact, or any substantial proportion of them, did not understand the issue on which they voted. A contention that the voters of Baltimore did not know what they were doing when they approved the airport

loan of 1927 because the whole ordinance was not printed on the ballot was rejected in Douty v. Mayor & City Council of Baltimore, 155 Md. 125, 138, 141 A. 499, 503, where Judge Sloan said for the Court: "* * * we cannot now assume that more than 66,000 voters who endorsed the project and the loan did not know what they were voting for."

In factual situations comparable to that before us, courts have supported the upholding of elections despite only partial compliance, or even non-compliance, with modal provisions as to notice or the holding of elections on various grounds. Some have found substantial compliance with statutory requirements, others have said that provisions would be construed as mandatory before election but as directory after the election had been fairly held. The latter reasoning, as we have suggested earlier, may be an imprecise, if not inaccurate, rationalization of what Judge Marbury said for the Court in Wilkinson v. McGill, supra, at page 393 of 192 Md., at page 269 of 64 A. 2d, that when an election has been held and it is not shown that the failure of election officials to hew strictly to the statutory line has prevented a full and fair expression of the will of the voters the Courts will not disturb the result. All of the cases turn fundamentally on whether the mistake in procedure has caused harm by misleading the electorate or by tending to prevent or frustrate an intelligent and full expression of the intent of the voters.

A number of courts have held that achievement of the result intended by the requirement of statutes as to notice or publication — that is, the apprising of the voters of the issue to be voted on — by non-statutory methods, such as newspaper, radio and television discussions or private advertisements or circulars, will be enough to uphold an election at which there was a full and apparently free vote. 3 McQuillin, Municipal Corporations (3rd Ed.), Sec. 12:10, pp. 77-78, says that whether provisions are regarded as mandatory or directory the rule usually applied is that irregularities which do not affect the result of an election will not invalidate it, for the courts prefer to give effect

to the popular will, and adds in Sec. 12:12, p. 94: "But an election will be sustained, notwithstanding the want of the usual proclamation or other prescribed notice, or defect in giving the required statutory notice, if the electors had general knowledge of it, and a reasonable number of votes were polled." See also 29 C.J.S. Elections § 74, p. 100.

In Groom v. Port of Bellingham, 189 Wash. 445, 65 P. 2d 1060, the prescribed statutory notice of an election covered the matters of certain port and public utility districts but gave no notice whatever of a resolution of the Commissioners of Bellingham to improve its harbor and to issue bonds to pay for the improvements which was also to be voted on. The approval at the election of the harbor improvements and the issuance of the bonds was challenged. The Court stated the general rule that an election will not be declared invalid for irregularities when it appears that the result was an "intelligent expression" of the popular will and the want of statutory notice did not deprive enough voters of their franchise to change the result, and said (65 P. 2d at pages 1060-1061):

> "To this election, aside from the election notice, there was given wide publicity. The matter of the improvement of the port and the issuing of the bonds was discussed in the newspapers, over the radio, at public meetings, and 30,000 copies of the official ballot, which carried the propositions here in question, were circulated generally and extensively to the voters throughout the county. Appearing upon the election ballot at the general election, there were constitutional amendments, initiatives, referendums, and other propositions, and upon these approximately the same number of votes were cast as were cast upon the port propositions. A port commissioner was elected, and the vote cast for port commissioner was likewise practically the same as the vote upon the propositions stated."

and then concluded:

> "In the case now before us, if the election notice had contained the propositions referred to and there

had been given no further publicity to the matter whatever, the election would have conformed to the law and would have been valid. So far as advising the voters was concerned, the publishing and posting of the notice would have been merely nominal in comparison with what was done in this case in an endeavor to bring to the attention of the voters of Whatcom county the propositions that they were to vote upon relative to the port. It may be true, and probably is, that no one failed to vote upon the propositions because they did not appear upon the election notice. It unquestionably is true that not a sufficient number of the voters failed to vote to change the result of the election. The vote was such, as compared with the votes upon other propositions, as to indicate an intelligent and well-informed expression of the popular will."

See also Vickers v. Schultz, 195 Wash. 651, 81 P. 2d 808, 810; and Shaw v. Shumway, 3 Wash. 2d 112, 99 P. 2d 938, 941.

The same reasoning was followed by the Supreme Court of Wisconsin in Commonwealth Telephone Co. v. Public Service Commission, 219 Wis. 607, 263 N.W. 665, 668 ("Information actually given the electors by the notices, official and otherwise * * * and in the other unofficial publications and circulars in relation to the issue * * * were undoubtedly as widespread and ample as the electors would have received from notices published in strict compliance with the statutes."); and in Bay County v. Hand, 257 Mich. 262, 241 N.W. 256, 258 ("The record is wholly to the effect that the matter was given widest publicity by public discussion throughout the county and by the press and otherwise, and is likewise to the effect that the irregularities were without prejudice, and they will therefore be held not fatal to validity of bonds") and in Commonwealth v. Kelly, 255 Pa. 475, 100 A. 272, 274. See also Michigan Public Service Co. v. City of Cheboygan, 324 Mich. 309, 37 N.W. 2d 116, 128; Flake v. Board of Commissioners, 192 N.C. 590, 135 S.E. 467; Phillips v. City of Rock Hill, 188

S.C. 140, 198 S.E. 604, 607, 119 A.L.R. 656. Oklahoma followed the same reasoning as to a constitutional requirement in State ex rel. McNeill v. Long, 178 Okl. 409, 63 P. 2d 60, 62.

In Gollar v. City of Louisville, 187 Ky. 448, 219 S.W. 421, the Court of Appeals of Kentucky upheld an election at which a bond issue had been approved, although the direction of the ordinance authorizing the bonds that its text be published in each of the daily morning and afternoon papers in Louisville for at least ten days prior to the day of election had been completely ignored. The Court noted that newspaper publicity had been long and extensive and that there had been placards, posters and moving picture "flashes" as to the bond issue — which it characterized as "a literal bombardment of publicity," and said (219 S.W. at page 422):

> "It is difficult to see how much greater publicity could have been given to the matter, and it would seem almost impossible, with these matters so constantly and continuously before them, that many citizens of Louisville could have failed to know and understand the nature, the object, the need, and the purpose of the bond issue. True, the ordinance in its entirety was not embodied in any of the articles of advertisements, but the main points were featured time and again. The object sought by publication is to bring the ordinance to the attention of the people, that they might be thoroughly posted and advised of its import, and thus enabled to vote intelligently upon the measure."

We conclude that, as in the cases discussed above, there is no real indication, much less a showing, that the voters were not as fully informed about the proposed compact as they would have been had the text been published in fifty-six newspapers, as the current statute contemplated, rather than in one. We see no persuasive evidence that the will of the electorate was not knowingly, fully and freely expressed, unaffected to any discernible extent by the

failure to publish the text as extensively as prescribed, and hold that Ch. 269 of the Acts of 1959 was effectively approved by the voters of the State on November 8, 1960.

We pass to the matters as to which the appellants sought declarations of unconstitutionality. They allege that the Act must fall under Art. III, Sec. 29, of the Maryland Constitution for the failure of its title to have fairly advised the Legislature and the people of the real nature of the bill. The title states that the bill is an act to ratify the compact of 1958 with Virginia, which established a joint commission with the duties of conserving the fishery resources and managing and controlling fisheries in a portion of the Potomac River, and which established a system of licenses "for the taking of fishery resources" from the River by the citizens of both states and which related "generally to the supply, management, control, conservation, taking and use of the fishery resources in a portion of the Potomac River between the State of Maryland and the Commonwealth of Virginia and to the powers and duties of the said joint commission and of the citizens of the two states with relation to these fishery resources * * *" and which provided for the codification of the compact.

The appellants complain that there is no reference in the title to the fact that (a) existing licenses are to be cancelled six months after the effective date of the Act, (b) Virginia Courts are empowered to try Maryland citizens for crimes committed on the River and to confiscate their boats and equipment, (c) Maryland laws as to finfish are frozen as of December 1, 1958, and (d) Maryland agrees to make annual appropriations for the expenses of administering the compact of not less than $50,000.

We have held often, and recently, that while a title must fairly indicate the subject of the legislation, it need not give an abstract of the act or specify the means by which the purposes are to be accomplished, as long as it is not misleading. Allied American Mut. Fire Ins. Company v. Commissioner, 219 Md. 607, 614, 615, 150 A. 2d 421;

Leonardo v. Board of County Commissioners, 214 Md. 287, 299, 300, 134 A. 2d 284; Board of County Com'rs of Prince George's County v. Donohoe, 220 Md. 362, 366, 367, 152 A. 2d 555; Jacob v. Klawans, 225 Md. 147, 153, 169 A. 2d 677.

We see nothing misleading in the title now challenged, and think it described the legislation with fairness and sufficient fullness to meet the constitutional requirements in Art. III, Sec. 29, that "* * * every Law * * * shall embrace but one subject, and that shall be described in its title * * *."

The remaining matters which appellants ask the Court to declare unconstitutional are largely those the omission of which from the title they contend made it defective, that is, legislative power has been abdicated and unpermissibly delegated, and the State of Virginia has been authorized to police crime on the Potomac, a Maryland river, and to try Maryland citizens in its Courts for crimes committed on the River.

It cannot be doubted that the power to make a contract by statute, that is to say, a compact, with a sister state, is a power inherent in sovereignty limited only by the requirement of Congressional consent under Art. I, Sec. 10, of the Constitution of the United States. Chesapeake & Ohio Canal Co. v. Baltimore & Ohio Railroad Co., 4 Gill & J. 1, 129, et seq.; Frankfurter and Landis, The Compact Clause of the Constitution, a Study in Interstate Adjustments, 34 Yale L.J. 685. The use of a compact for the execution of governmental functions is not an abdication but an exercise of government. "The compact — the legislative means — adapts to our Union of sovereign States the age-old treaty making power of independent sovereign nations," as Mr. Justice Brandeis said for the Court in Hinderlider v. La Plata R. & Cherry Creek D. Co. 304 U.S. 92, 104, 58 S. Ct. 803, 808, 82 L. Ed. 1202, 1209.

It has been held that the states of the Union may validly agree by compact with other states to delegate to interstate commissions or agencies legislative and administrative powers and duties. Hinderlider v. La Plata R. &

Cherry Creek D. Co. supra; State of West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 71 S. Ct. 557, 95 L. Ed. 713; Application of Waterfront Commission of New York Harbor, 39 N.J. Super. 33, 120 A. 2d 504, 509. The Sims case also held that the contract of a state to provide annually its respective proportion of the expenses of an interstate commission was binding and enforceable. See also Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275, 79 S. Ct. 785, 3 L. Ed. 2d 804; New York v. O'Neill, 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585; and annotation in 134 A.L.R. 1411.

We note also in passing that it has long been established that where the middle of a river or one of the shores of the river is a boundary between two states, these neighbors may establish concurrent jurisdiction over the whole river by compact. Where this is done each of the states has jurisdiction from shore to shore so that the court before which the offender or the subject of legal adjudication, prosecution or trial, is first brought finally determines the case. The cases have reasoned that if the laws of both states make the same act or omission criminal, each state, in carrying out the concurrent jurisdiction, does so permissibly in the enforcement of its own laws. See Rorer, American Interstate Law, 2nd Ed., 438 et seq.; State v. Cunningham, 102 Miss. 237, 59 So. 76; State v. Federanko, 26 N.J. 119, 139 A. 2d 30; People v. Central R. R. Co. of N.J., 42 N.Y. 283; Olin v. Kitzmiller, 259 U.S. 260, 42 S. Ct. 510, 66 L. Ed. 930; Hendricks v. Commonwealth, 75 Va. 934; State v. Kurtz, 317 Mo. 380, 295 S.W. 747; Lemore v. Commonwealth, 127 Ky. 480, 105 S.W. 930; State v. Mullen, 35 Iowa 199; State v. George, 60 Minn. 503, 63 N.W. 100; Padgett v. State, 151 Ark. 290, 236 S.W. 603; Means v. State, 118 Ark. 362, 176 S.W. 309; State v. Catholic, 75 Or. 367, 147 P. 372.

In the view we take of the case, however, we think appellants are not entitled to have a declaration as to the constitutionality of the compact in operation. They have not shown that they are engaged in or faced with actual controversy, or that the issues are ripe and justiciable

so as to be able to call upon the courts to exercise the declaratory process. Hammond v. Lancaster, 194 Md. 462, 471, 71 A. 2d 474; Hitchcock v. Kloman, 196, Md. 351, 355, 76 A. 2d 582; Tanner v. McKeldin, 202 Md. 569, 97 A. 2d 449; Givner v. Cohen, 208 Md. 23, 37, 116 A. 2d 357. Appellants do not show that the provisions of the Act of which they complain will affect any legal interests they possess or that they present immediate dangers or inevitable litigation against them except to allege that they may be tried in Virginia courts for "alleged offenses" on a Maryland river and that they will suffer "irreparable damage" by reason of the "illegal expenditure" for the expenses of administering the compact. It was held in Hitchcock v. Kloman, supra that the fact a criminal penalty overhung the petitioner for declaratory relief if he acted as he claimed a right to act, would not of necessity call for a declaration as to the constitutionality of his doing what he wished to do. This Court said in Hammond v. Lancaster, at page 477 of 194 Md., at page 481 of 71 A. 2d, supra:

> "We think, however, that none of the other provisions of the Act are properly before us. The only alleged waste of public funds, except in regard to the referendum, is in the expense of enforcing and administering the Act. But we are referred to no Maryland case holding that to be a sufficient interest. On the other hand, the Supreme Court cases clearly indicate that it is beyond our power to adjudicate constitutional issues at the instance of taxpayers not directly affected. None of the complainants have been threatened with prosecution, nor do they allege any facts to indicate that they have violated, or are about to violate, any of the criminal provisions of the Act."

The decree appealed from, to the extent that it held that Ch. 269 of the Acts of 1959 was, on its face, a constitutional enactment with was validly approved and ratified by the voters on November 8, 1960, and its dismissal of the Bill is affirmed.

Decree affirmed, with costs.

MARBURY, Judge (dissented).

With regret I find myself in disagreement with the majority opinion dealing with the adequacy or inadequacy of the publication of the text of Chapter 269 of the Acts of 1959 (the Potomac River Compact of 1958) prior to the vote taken on November 8, 1960. It has been said that the only useful purpose in filing a dissenting opinion is perhaps to underscore what the *law is not* and to point up what it *ought to be*. In this instance I am so deeply concerned with the precedent established by the majority opinion that I feel constrained to express my own views with reference to the constitutional principles here involved.

The majority hold that constitutional and statutory provisions are mandatory before an election, but that statutory provisions are directory only after the election, so that the result of the election may only be successfully contested by showing that the inadequacy of publication might reasonably be supposed to have affected the result. They candidly concede that the publication of the text of Chapter 269 in only one of fifty-six newspapers was not in substantial compliance with Article 33, §170, as enacted by Chapter 739 of the Acts of 1957, which was in implementation of Article XVI, §5(a) of the Constitution; and treat the requirement that furnishing of the text of referred laws, as required by §170, establishes a statutory rather than a constitutional requirement. They draw a distinction between violation of a mandatory constitutional provision, Baltimore and Drum Point Railroad Company v. Pumphrey, 74 Md. 86, 21 A. 559, and violation of a mandatory statutory provision and hold that the mandatory provision of the statute before the election becomes directory only after the vote has taken place. I can not find this distinction to be valid.

The referendum article of the Constitution, Article XVI, §1(b), provides that "The provisions of this Article shall be self-executing; provided that additional legislation in furtherance thereof and not in conflict therewith may be enacted." Section 5(a) of the same Article requires that

"The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed Constitutional Amendments." Article XIV, §1 requires that a bill proposing an amendment to the Constitution shall be published by order of the Governor, in at least two newspapers, in each County, where so many be published, and where not more than one may be published, then in that newspaper, and in three newspapers published in the City of Baltimore, once a week for four weeks immediately preceding the next ensuing general election, at which the proposed amendment shall be submitted.

As pointed out in the majority opinion, the Legislature first implemented Article XIV, §5 by the passage of Chapter 335 of the Acts of 1941 (codified as Code, 1951, Art. 33, §208). This required the publication of referred laws at least once in some daily newspaper of general circulation throughout the State. This remained the law until the passage of Chapter 739 of the Acts of 1957 (now codified as Art. 33, §170), which in substance changed the law to read substantially as provided in Article XIV, §1 of the Constitution before any legislative enactment on the subject was passed. It is obvious that both Chapter 335 of the Acts of 1941 and Chapter 739 of the Acts of 1957 carried mandatory provisions as to the publication of referred laws, as did Article XIV, §1 of the Constitution. They were, therefore, in conformity with Article XVI, §1(b), since they were in furtherance of and not in conflict with that Article. Had the Legislature, in enacting either the 1941 Act or the 1957 Act, undertaken to have substituted the directory word "may" for "shall" as provided in Article XIV, §1, it is obvious that this attempt would have been repugnant to and in contravention of the mandatory provision of that Article of the Constitution. Since the General Assembly was powerless to pass an act which would be clearly unconstitutional, how can it be said that the courts may do this by construing the word "shall" as mandatory before

the election and directory thereafter? The answer must be in the negative. The provisions of the Constitution and the laws enacted pursuant thereof are binding upon all branches of the government and the citizens of the State, and can not be disregarded by tenuous interpretation by the courts.

Since Article 33, §170, by the express provisions of Article XVI, §1(b), is in *pari materia*, the former can only be construed in its literal constitutional sense. In the language of Judge Cooley, quoted in Archer v. State, 74 Md. 443, 448, 22 A. 8, 9, in discussing mandatory and directory constitutional provisions, it is said:

> "Courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of a Constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the thing to be done; and they must be regarded in the light of limitations upon the power to be exercised. It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims, and fix those unvarying rules by which all departments of government must at all times shape their conduct. * * * We are not, therefore, to expect to find in a Constitution provisions which the people in adopting it have not regarded as of high importance, and worthy to be embraced in an instrument which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument when we infer that

> such directions are given for any other end. Especially, as has already been said, it is but fair to presume that the people in their Constitution have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, and with a view to leave as little as possible to implication. Cooley Const. Lim. (3d Ed.) 78, 79."

See 16 C.J.S. Constitutional Law §61; dissenting opinion of Judge Phelps in State ex rel. McNeill v. Long, 178 Okl. 409, 63 P. 2d 60, 65, a five to four decision.

The appellee's contention, which was embraced in the majority opinion, that in spite of the almost total disregard of the statutory provision as to publication of the text of Chapter 269, there is no showing that the voters were misinformed or misled when they voted in favor of its adoption is not persuasive. While it is true that much publicity was given the fact that an election was to be held, at which the voters would be called upon to vote upon this referred question, by means of newspaper articles, editorials, radio and television programs, in which the writers or speakers gave their views pro and con, this was not the mode of information envisaged in the constitutional and statutory requirements as to publishing the text of the referred law. There was much discussion through these news media, some of which dealt with only portions of the Act, some from the point of view of the proponent or opponent, with varying degrees of accuracy, which leaves the question open as to whether the electorate was fairly informed as to the subject matter of the Act.

While it may be true that the average citizen does not read the text of referred laws in his county or city paper, nevertheless a number of publicly interested citizens do read them and these, on the basis of their opportunity to familiarize themselves with the text, can materially aid in formulating public sentiment for or against proposed legislation. This was the intent of the framers of the Constitution, and undoubtedly that of the Legislature when it amended that section of the election laws in 1957. Until the Constitution, or a statute passed pursuant thereto, pro-

vides some other means for informing the people, I think the courts are not at liberty, in the enforcement of a statute, to disregard any mandate or requirement of the organic law of the State. The need for adherence to strict interpretation of the Constitution and laws of the State becomes overwhelmingly apparent where, as in this case, it is sought to submit to the voters of the State an act which would amend the compact between Virginia and Maryland, which has existed since 1785.

I would reverse the chancellor's decree because of the non-compliance with the requirement as to publication of the text of this law.

APPENDIX B

Mandate of Court of Appeals of Maryland

June 12, 1961: Decree affirmed, with costs.

Decree of Circuit Court of Baltimore City

The above entitled case having come on for hearing upon the Bill of Complaint, Answer thereto and Motions for Summary Judgment filed by the respective parties, and this Court having found that there was no substantial dispute of fact and that the matter was principally one of law; and the Court having fully considered the arguments and memoranda of counsel and having further read all exhibits, affidavits, depositions and answers to interogatories filed in the case, it is (for the reasons set forth in the Memorandum Opinion of the Court dated January 11, 1961) this 19th day of January, 1961, by the Circuit Court of Baltimore City

Ordered, Adjudged and Decreed:

1. That Chapter 269 of the Acts of 1959 is constitutional.

2. That the Court finds that there was a full and free expression of the popular will on the referred question, as more fully set forth in the proclamation of the Governor of this State dated December 1, 1960, declaring that

Chapter 269 of the Acts of 1959 was approved by the voters.

3. That the voters of this State duly ratified and approved the enactment of said Chapter 269 of the Acts of 1959 at the general election held on November 8, 1960; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the Bill of Complaint be and the same is hereby dismissed; and it is

FURTHER ORDERED that the Complainants pay the costs of these proceedings.

ANSELM SODARO,
Judge.

APPENDIX C

PERTINENT TEXT OF CHAPTER 269 OF THE LAWS OF MARYLAND OF 1959.

Title

AN ACT to approve, confirm and ratify on the part of the State of Maryland a Compact entered into by the State of Maryland and the Commonwealth of Virginia at Mount Vernon, Virginia, on December 20, 1958, and entitled "The Compact of 1958", by Commissioners earlier appointed by the respective Governors of Maryland and Virginia, establishing a joint Commission representing the State of Maryland and the Commonwealth of Virginia to conserve and maintain the fishery resources of a portion of the Potomac River, providing for the conservation, management and control of the fisheries in the designated portion of the Potomac River, establishing a system of licenses for the taking of fishery resources from the River by citizens of both states, and relating generally to the supply, management, control, conservation, taking and use of the fishery resources in a portion of the Potomac River between the State of Maryland and the Commonwealth of Virginia and to the powers and duties of the said joint commission and of the citizens of the two states with relation to these

fishery resources; and providing that "The Compact of 1958" be codified in and become a part of the Annotated Code of Maryland (1957 Edition), as Section 261A of Article 66C, title "Natural Resources", sub-title "Fish and Fisheries", to follow immediately after Section 261 thereof and to be under the new sub-heading "Compact of 1958".

* * * * * *

Article V, Section 2

Penalties. The violation of any regulation of the Commission shall be a misdemeanor. Unless a lesser punishment is provided by the Commission, such violation shall be punishable by a fine not to exceed one thousand dollars ($1,000.00) or confinement in a penal institution for not more than one (1) year, or both, in the discretion of the court, and any vessel, boat, or equipment used in the taking of finfish, crabs, oysters, clams, or other shellfish from the Potomac River in violation of any regulation of the Commission or of applicable laws may be confiscated by the court, upon the abandonment thereof or the conviction of the owner or operator thereof.

Article V, Section 3

Jurisdiction of Court. The officer making an arrest or preferring a charge for violation of a regulation of the Commission or an applicable state law respecting the waters within the Commission's jurisdiction shall take the alleged offender to a court of competent jurisdiction in either State, in a county adjacent to the portion of the Potomac River where the alleged offense occurred, which shall thereupon have jurisdiction over the offense.

* * * * * *

Article VI, Section 2

Appropriations. The said Governors shall place in the proposed Budget of their respective states for each year the sum of not less than Fifty Thousand Dollars ($50,000.00) for the expenses and the other purposes of the Commission for that year, except that none of the sum so appro-

priated shall be used for law enforcement purposes; and the General Assembly of each of the two states agrees to appropriate annually not less than this sum to the Commission.

* * * * * *

Article VII, Section 2

Existing Laws. The laws of the State of Maryland relating to finfish, crabs, oysters, and clams in the Potomac River, as set forth in Article 66C of the Annotated Code of Maryland and as in effect on December 1, 1958, shall be and remain applicable in the Potomac River except to the extent changed, amended, or modified by regulations of the Commission adopted in accordance with this Compact.

Article VII, Section 3

Existing Licenses. The rights and privileges of licensees to take and catch finfish, crabs, oysters, clams, and other shellfish in the Potomac River, which are in effect at the time this Compact becomes effective, shall continue in force for a period of six months at which time every such license and every such right and privilege shall be abrogated.